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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

ART UNIT:	3732)
EXAMINER:	Matthew M. Nelson)
APPLICANT:	James K. Garland)
SERIAL NO.:	10/589,386) PETITION TO REVIVE
FILED:	06-07-2007) UNINTENTIONALLY
FOR:	DENTAL MODEL TRAY AND ASSOCIATED ARTICULATOR) ABANDONED
DOCKET NO.:	Tear Away Wall) APPLICATION UNDER) RULE 1.137(b)

Commissioner for Patents
P.O. 1450
Alexandria, Virginia 22313-1450

In accord with Rule 1.137(b), applicant respectfully requests the revival of the above-identified application as was recommended by James T. Moore, Acting Chief Administrative Patent Judge, in his DECISION ON PETITION of a previous Petition to Director that applicant filed on February 12, 2010. In his DECISION ON PETITION Acting Chief Administrative Patent Judge James T. Moore noted that the process under Rule 1.137(b) was recommended for use by Applicant in the present situation. In the DECISION ON PETITION Acting Chief Administrative Patent Judge James T. Moore further granted applicant "a period of one month from the date hereof to file a petition under Rule 1.137(b)." It

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is noted that the "date hereof" mentioned in the DECISION ON PETITION was totally ambiguous inasmuch as the DECISION ON PETITION was not dated and there was no cover letter with the DECISION ON PETITION indicating what date the DECISION ON PETITION was signed or mailed.

The Patent and Trademark Office apparently has full authority and discretion to be totally hypocritical. The Patent and Trademark Office can make mistakes by not crossing t's and dotting i's (or in the present instance of not dating papers but still using language such as "date hereof" in the papers), but applicants are simply not to be allowed to make and thereafter correct such insignificant mistakes. It is noted that the present application was held to be abandoned because applicant used the words "Claims 1-8 stand rejected" in a section of the Appeal Brief instead of the magic words "Claims 1-8 are appealed." It is submitted that it is completely customary and universal that the claims that stand rejected are the ones that are appealed, and that it would not have taken much thought by anyone at the Board of Appeals to ascertain that claims 1-8 are appealed. Yet, the appeal was held to have gone abandoned because of the absence of three magical words "are on appeal." This insignificant and minuscule mistake by applicant was however seen by the Patent and Trademark Office as substantial enough to

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hold that the entire application had gone abandoned. Talk about using the "nuclear option." But it appears that the Patent and Trademark Office finds that it has the dictatorial authority to utilize that "nuclear option" whenever it can be used to bring in additional fees into the coffers of the Patent and Trademark Office.

Now, to get back to the formal requirements of a petition under Rule 1.137(b), applicant hereby states that the required reply from the due date for the reply until the filing of a grantable petition pursuant to paragraph (b) of Rule 1.137 was unintentional. Acting Chief Administrative Judge James T. Moore in his previously referred to DECISION ON PETITION in effect acknowledged that the delay was unintentional, and Acting Chief Administrative Judge James T. Moore stated unequivocally that the process for achieving revival of the present application is provided by a petition under Rule 1.137(b).

A reply to the outstanding action was filed on Feb. 12, 2010 with the previous petition under Rule 1.183 which was filed on that same day. To avoid any possibility of the Patent and Trademark Office again exercising the "nuclear option" by questioning whether a reply has been made with this petition, applicant attaches herewith the first page of the Amended Appeal Brief showing a date stamp indicating that it was received in the

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Patent and Trademark Office on Feb. 12, 2010. The first page of the Amended Appeal Brief showing the date stamp of Feb. 12, 2010 should simply replace the deficient, original first page of the Amended Appeal Brief that is of record in this application. The first page of the Amended Appeal Brief having the date stamp of Feb. 12, 2010 adds the magic words "Claims 1-8 are on appeal" and thus overcomes the objection made by the examiner handling this application.

The applicant remains and is a small entity. The petition fee of \$810.00 for a small entity is attached hereto.

Respectfully submitted,



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APPLICANT'S AMENDED APPEAL BRIEF

Real Party in Interest

The real party in interest with respect to Appellant's appeal is the Applicant, James K. Garland.

Related Appeals and Interferences

There are no related appeals and interferences known to Applicant.

Status of Claims

Claims 1-8 stand rejected, and Claims 1-8 are on appeal, i.e., are appealed.

Status of Amendments

The claims were amended in response to the first Office Action, and that amendment has been entered. The claims were amended a second time in response to the Final Rejection, and the second amendment was not entered.

Summary of the Claimed Subject Matter

The numbers in the following summary are the reference numbers used in the drawings of the patent application. Subject matter of claim 1 includes dental trays 12 and associated articulation members 13 and 14 which are used in pairs. The two trays 12 are identical. Each tray 12 comprises a rigid bottom wall 16. A continuous side wall 17 extends upwardly from the perimeter of the bottom wall 16 to form an open-topped cavity which is adapted to receive the dental casting material. (Page 5, lines 12-21 and Figs. 1, 2 and 4) The trays 12 are formed integrally from a rigid polymeric material. The lower edge or perimeter of the side wall 17 is attached to the perimeter of the bottom wall 16 by a thin connector member 19 that is formed